



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 22, 1994

Mr. Gary Steinberger
Assistant City Attorney
The City of Fort Worth
1000 Throckmorton
Fort Worth, Texas 76102

OR94-744

Dear Mr. Steinberger:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27940.

The City of Fort Worth (the "city") received an open records request from the City of Arlington (the "requestor") for the "1992-1993 Statistical Report" prepared by the city's water department. You explain that the requested report is used to calculate rates charged the requestor for sewage treatment service provided by the city and that the requestor has filed a petition with the Texas Natural Resource Conservation Commission regarding the city's fixing of reasonable rates for sewage treatment service. You therefore contend that the requested report comes under the protection of section 552.103 of the Government Code.

Section 552.103(a), known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision No. 588 (1991) at 1. In this instance, you have shown that the requested material meets these tests.

However, this does not end our discussion of the applicability of section 552.103(a). The requestor has informed this office that the city has previously allowed one of the requestor's representatives to view the requested information.

On July 22, 1994, Don Hicks requested a copy of the statistical report from Fort Worth's Water Department. On Monday, July 25, 1994, Don Hicks called the Water Department to see if a copy was available. He was told it was. Mr. Hicks arrived at the Fort Worth Water Department to get a copy and was informed that there was no copy available. He then went up to the next floor where the Fort Worth Municipal Library is located, pulled a copy of the 1993 Statistical Report and made copies of a few of the pages

In support of the above claims, the requestor has provided this office with the copies of the report at issue that Mr. Hicks made at the city's municipal library.

Given these facts, we cannot conclude that the city may withhold the report pursuant to section 552.103(a). Absent special circumstances, once information has been obtained by all parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). Because the city has granted the requestor access to the report, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a).¹ Accordingly, the city must release the report to the requestor without delay.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

¹We further note that if the requested report was available for public viewing in the municipal library during the time that the open records request was made, the city has waived the right to withhold the report because the Open Records Act prohibits selective disclosure. See Gov't Code § 552.007(b).

LRD/RWP/rho

Ref.: ID# 27940

Enclosures: Submitted documents

cc: Mr. Don Hicks
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(w/o enclosures)

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